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9 CITIMORTGAGE, INC.

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
12

13 ROBERT NEIL EMORY,

14 Plaintiff,

15 vs.

16 CITIMORTGAGE, INC.; and DOES I – X,

17 Defendant.
18

CASE NO. 2:12-cv-01685-APG-VCF

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFF ROBERT NEIL EMORY
AND DISMISSING PLAINTIFF'S
COMPLAINT, WITH PREJUDICE**

19
20 Before the Court is "Defendant CitiMortgage, Inc.'s Motion for Summary Judgment."

21 **PROCEDURAL HISTORY**

22 The Plaintiff initiated this matter on September 25, 2012, with the filing of his original
23 Complaint, alleging claims for (1) breach of contract for failing to terminate the Private Mortgage
24 Insurance ("PMI") and for failing to consider Plaintiff's request for a loan modification and
25 principal modification under the National Mortgage Settlement Act; (2) breach of implied
26 covenant of good faith and fair dealing for failing to fulfill the terms of the contract for not
27 terminating the PMI; and (3) negligence per se for failing to follow the Homeowners Protection
28 Act ("HOPA") and the National Mortgage Settlement Agreement. Defendant CitiMortgage

1 (hereinafter "CitiMortgage") answered on November 26, 2012, after a stipulation to extend time
2 to answer.

3 On October 23, 2013, CitiMortgage filed its Motion for Summary Judgment. The Plaintiff
4 did not file an opposition to CitiMortgage's motion.

5 On March 7, 2014, after reviewing the motion on the merits, and finding the motion
6 meritorious, the Court, issued a minute order granting CitiMortgage's Motion for Summary
7 Judgment. The Court further found grounds to grant CitiMortgage's Motion for Summary
8 Judgment pursuant to Local Rule 7-2(d), as the Plaintiff did not file an opposition to the motion.

9 Accordingly, the Court having considered the motion on the merits, hereby finds:

10 FINDINGS

11 THE COURT HEREBY FINDS that because, Plaintiff never brought his account current
12 in accord with the language of HOPA, the automatic termination provision of HOPA was never
13 triggered, and Plaintiff was never entitled to termination of his PMI.

14 THE COURT FURTHER FINDS that Plaintiff has no cause of action under the National
15 Mortgage Settlement Agreement because it is a consent judgment between the states and mortgage
16 servicers, providing no private cause of action to individual borrowers who are only incidental
17 beneficiaries. This Court, in agreement with, *Rehbein v CitiMortgage, Inc.*, 2013 U.S. Dist.
18 LEXIS 49104 (E.D.Va. 2013), finds the language of the consent judgment did not intend
19 individual borrows to be able to sue to protect the benefits the consent judgment confers.

20 THE COURT FURTHER FINDS that even if Plaintiff did have a private right of action,
21 jurisdiction for enforcement of the National Mortgage Settlement Agreement lies solely with the
22 United States District Court for the District of Columbia.

23 THE COURT FURTHER FINDS that Plaintiff is not entitled to any other loan
24 modification or remedy based on his own admission that he had no agreements with CitiMortgage
25 to change the terms of the note or deed of trust at any point in time.

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ORDER

Based upon the foregoing findings, and good cause appearing, the Court Orders as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Citimortgage, Inc.'s Motion for Summary Judgment is GRANTED.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint is DISMISSED, with prejudice.

DATED this 21st day of March, 2014.



DISTRICT COURT JUDGE

Respectfully submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/
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